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BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE COMMITTEE
OF PSYCHOLOGISTS
FILED

STATE COMMITTEE OF PSYCHOLOGISTS,
3605 Missouri Boulevard
Jefferson City, Missouri 65102

Petitioner,

v.

N. PATRICK MCCracken, Ph.D.,
1600 Heritage Landing, Suite 104
St. Charles, Missouri 63303

Respondent.

JUL 08 1996

ADMINISTRATIVE HEARING
COMMISSION

Case No. 95-001930 PS

JOINT STIPULATION OF FACTS, WAIVER OF HEARING
BEFORE THE ADMINISTRATIVE HEARING COMMISSION AND
STATE COMMITTEE OF PSYCHOLOGISTS AND CONSENT ORDER
WITH JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (1 CSR 15-2.450(1)) and pursuant to the terms of § 536.060, RSMo 1994, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo 1994, the parties waive the right to a hearing of the above-styled case by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the State Committee of Psychologist under § 621.135, RSMo 1994, and jointly stipulate to the facts and consent to the imposition of disciplinary action against the psychologists license of Respondent for violations of statutes set forth below:

Respondent acknowledges that he has received and reviewed a copy of the Complaint filed by the State Committee of Psychologists in this case and the parties submit to the jurisdiction of the Administrative Hearing Commission.

The Respondent acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against Respondent; and the right to a ruling on questions of law by an administrative hearing commissioner. Being aware of these rights provided the Respondent by operation of law, the Respondent, N. Patrick McCracken, Ph.D., knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and State Committee of Psychologists and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law and agrees to abide by the terms of this document as they pertain to Respondent.

Respondent hereby waives and releases the Committee, its members and any of its employees, agents, or attorneys, including any former Committee members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of

action, fees, costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Stipulation, or from the negotiation or execution of this Stipulation.

I.

Based upon the foregoing, the Petitioner and the Respondent jointly stipulate to the following and request that the Administrative Hearing Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Administrative Hearing Commission's Findings of Fact and Conclusions of Law:

JOINT PROPOSED FINDINGS OF FACT

ALLEGATIONS COMMON TO ALL COUNTS

1. The State Committee of Psychologists ("Committee") is an agency of the state of Missouri, created and established for the purpose of executing and enforcing the provisions of Chapter 337, RSMo.

2. Respondent was licensed by the Committee as a psychologist, license no. PY00764, at all times relevant hereto.

COUNT I

3. From on or about September 9, 1990 until June 1991, Respondent treated patient B.R.

4. B.R.'s presenting problems included marital difficulties.
5. During the course of his treatment of B.R., Respondent engaged in an inappropriate sexual relationship with Patient B.R.
6. During the course of treatment, Respondent engaged in an unprofessional social relationship with Patient B.R.
7. During the course of treatment, Respondent engaged in an unprofessional dual relationship with Patient B.R.
8. Respondent's conduct as set forth herein compromised the effectiveness of therapeutic intervention.

COUNT II

9. In January 1991, Respondent began treating C.R., husband of B.R.
10. C.R. sought Respondent's professional psychological assistance to deal with marital issues.
11. Respondent, in treating both B.R. and C.R. while engaging in an unprofessional relationship with B.R., failed to provide effective therapeutic intervention for both B.R. and C.R.

JOINT PROPOSED CONCLUSIONS OF LAW

Count I

12. Respondent's conduct as set forth in Count I violates 4 CSR 235-5.020, (effective December 11, 1983, and in effect through February 5, 1992) which provides:

(2) **Responsibility.** In providing services, psychologists maintain the highest standards of their profession. They accept responsibility for the consequences of their acts and make every effort to ensure that their services are used appropriately.

...

(F) As practitioners, psychologists know that they bear a heavy social responsibility because their recommendations and professional actions may alter the lives of others. They are alert to personal, social, organizational, financial, or political situations and pressures that might lead to misuse of their influence.

(3) **Competence.** The maintenance of high standards of competence is a responsibility shared by all psychologists in the interest of the public and the profession as a whole. Psychologists recognize the boundaries of their competence and the limitations of their techniques

(F) Psychologists recognize that personal problems and conflicts may interfere with professional effectiveness. Accordingly, they refrain from undertaking any activity in which their personal

problems are likely to lead to inadequate performance or harm to a client, colleague, student, or research participant. If engaged in such activity when they become aware of their personal problems, they seek competent professional assistance to determine whether they should suspend, terminate, or limit the scope of their professional and/or scientific activities.

(4) Moral and Legal Standards. Psychologists' moral and ethical standards of behavior are a personal matter to the same degree as they are for any other citizen, except as these may compromise the fulfillment of their professional responsibilities or reduce the public trust in psychology and psychologists. Regarding their own behavior, psychologists are sensitive to prevailing community standards and to the possible impact that conformity to or deviation from these standards may have upon the quality of their performance as psychologists. Psychologists are also aware of the possible impact of their public behavior upon the ability of colleagues to perform their professional duties.

...

(7) Welfare of the Consumer Psychologists respect the integrity and protect the welfare of the people and groups with whom they work. . .

(A) Psychologists are continually cognizant of their own needs and of their potentially influential position vis-a-vis persons such as clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid dual relationships that could impair their professional judgement or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, research with and treatment of employees, students, supervisees, close friends, or relatives. Sexual intimacies with clients are unethical.

13. Respondent's conduct as set forth herein violates the professional trust and confidence due B.R.

14. Respondent's conduct as set forth in Count I violates Sections 337.035.2 (5), (6), and (13), RSMo Supp. 1990, which provide:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of

registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(5) Incompetency, misconduct, gross negligence, . . . or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

...

(13) Violation of any professional trust or confidence;

...

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

Count II

15. Respondent's conduct in treating both B.R. and C.R. and engaging in an unprofessional relationship with B.R. violates the provisions of 4 CSR 235-5.020 (effective December 11, 1983, through February 5, 1992) which provide:

(2) Responsibility. In providing services, psychologists maintain the highest standards of their profession. They accept responsibility for the consequences of their acts and make every effort to ensure that their services are used appropriately.

...

(F) As practitioners, psychologists know that they bear a heavy social responsibility because their recommendations and professional actions may alter the lives of others. They are alert to personal, social organizational, financial, or political situations and pressures that might lead to misuse of their influence.

(3) Competence. The maintenance of high standards of competence is a responsibility shared by all psychologists in the interest of the public and the profession as a whole. Psychologists recognize the boundaries of their competence and the limitations of their techniques . . .

(F) Psychologists recognize that personal problems and conflicts may interfere with professional effectiveness. Accordingly, they refrain from undertaking any activity in which their personal problems are likely to lead to inadequate performance or harm to a client, colleague, student, or research participant. If engaged in such activity when they become aware of their personal problems, they seek competent professional assistance to determine whether they should suspend, terminate, or limit the scope of their professional and/or scientific activities.

(4) Moral and Legal Standards. Psychologists' moral and ethical standards of behavior are a personal matter to the same degree as they are for any other citizen, except as these may compromise the fulfillment of their professional responsibilities or reduce the public trust in psychology and psychologists. Regarding their own behavior, psychologists are sensitive to prevailing community standards and to the possible impact that conformity to or deviation from these standards may have upon the quality of their performance as psychologists. Psychologists are also aware of the possible impact of their public behavior upon the ability of colleagues to perform their professional duties.

...

(7) **Welfare of the Consumer** Psychologists respect the integrity and protect the welfare of the people and groups with whom they work. . .

(A) Psychologists are continually cognizant of their own needs and of their potentially influential position vis-a-vis persons such as clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid dual relationships that could impair their professional judgement or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, research with and treatment of employees, students, supervisees, close friends, or relatives. Sexual intimacies with clients are unethical.

16. Respondent's conduct in treating both B.R. and C.R. while engaging in an unprofessional relationship with B.R. violates a professional trust or confidence due B.R. and C.R.

17. Respondent's conduct in treating both B.R. and C.R. while engaging in an unprofessional relationship with B.R. violates Sections 337.035.2 (5), (6) and (13), RSMo, Supp. 1990 which provide:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of

registration or authority, permit or license for any one or any combination of the following causes:

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

(13) Violation of any professional trust or confidence;

18. Respondent's conduct as set forth in Count II compromised the effectiveness of the therapeutic intervention.

DISCIPLINARY ORDER

In light of the foregoing stipulation of facts, Respondent and the Committee hereby consent and agree to the following disciplinary action to be imposed against License No. PY00764 effective the date the Administrative Hearing Commission enters its order.

1. By agreement of the parties, License No. PY00764 of N. Patrick McCracken, Ph.D., is hereby REVOKED. Respondent shall submit all copies and originals of Respondent's psychologist license, wallhanging, wallet certificate and all other indicia of licensure to the State Committee of Psychologists within thirty (30) days of the effective date of this Order.

2. In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation of Facts, Waiver of Hearings before the Administrative Hearing Commission and State Committee of Psychologists and to the termination of any further proceedings before the Administrative Hearing Commission based upon the complaint filed by Petitioner in the above-styled case. The parties hereby request that the Administrative Hearing Commission enter its Order finding cause for discipline of Respondent's license based upon the Administrative Hearing Commission's independent review of this Joint Stipulation.

3. The parties to this Joint Stipulation understand that the Committee will maintain this Joint Stipulation as an open record of the Committee as provided in Chapters 337, 610 and 620, RSMo.

RESPONDENT

N. Patrick McCracken
N. Patrick McCracken, Ph.D. date
6/74/75

CUNDIFF, TURKEN & LONDOFF

Ellsworth Cundiff, Jr. date

Attorneys for Respondent

STATE COMMITTEE OF
PSYCHOLOGISTS

Mildred D. Robertson 7-8-76
Mildred Robertson date
Executive Director

JEREMIAH W. (JAY) NIXON
Attorney General

Penney R. Rector 7/8/96
Penney R. Rector date
Assistant Attorney General
Attorneys for Petitioner